

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DESERT ORCHID PARTNERS, L.L.C.,  
individually and on behalf of all others  
similarly situated,**

**Plaintiff,**

**V.**

**TRANSACTION SYSTEMS ARCHITECTS,  
INC., WILLIAM E. FISHER, GREGORY J.  
DUMAN, DWIGHT G. HANSON, DAVID C.  
RUSSELL and EDWARD FUXA,**

**Defendants.**

**NANCY ROSEN, individually and on behalf  
Of herself and all others similarly situated,**

**Plaintiff,**

**V.**

**TRANSACTION SYSTEMS ARCHITECTS,  
INC., WILLIAM E. FISHER, GREGORY J.  
DUMAN, DWIGHT G. HANSON, DAVID C.  
RUSSELL and EDWARD FUXA,**

## Defendants.

**8:02CV553**

## ORDER

**8:02CV561**

This matter comes before the court on the defendants' Notice of Automatic Stay, or in the Alternative, Motion to Stay (Filing No. 317 in case 8:02CV553; Filing No. 359 in case 8:02CV561). The defendants seek a stay of discovery, pursuant to 15 U.S.C. § 78u-4(b)(3)(B) and Federal Rules of Civil Procedure 16(b) and 23(d), pending resolution of their motion to dismiss filed on June 14, 2006. In response to the motion for a stay, the plaintiffs filed a brief/cross-motion opposing the stay or, in the alternative, seeking limited discovery (Filing No. 319 in case 8:02CV553; Filing No. 362 in case 8:02CV561). Counsel for the parties participated in a telephone conference with the undersigned magistrate judge on June 15, 2006, and filed briefs and evidence in support of their positions.

In an action, such as this under the PSLRA, discovery is generally automatically stayed:

In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

15 U.S.C. § 78u-4(b)(3)(B).

The court finds the plaintiffs have shown particularized discovery is necessary to preserve evidence or to prevent undue prejudice in this case with regard to the deposition of non-party witness Don Marshall due to be taken on June 22, 2006, in London, England. Upon consideration,

**IT IS ORDERED:**

1. The defendants' Notice of Automatic Stay, or in the Alternative, Motion to Stay (Filing No. 317 in case 8:02CV553; Filing No. 359 in case 8:02CV561) is granted, except as provided herein.

2. The plaintiffs' motion to allow discovery (Filing No. 319 in case 8:02CV553; Filing No. 362 in case 8:02CV561) is granted with regard to the deposition of Don Marshall due to be taken on June 22, 2006, in London, England, and denied in all other respects.

3. The defendants' Objection (Filing No. 320 in case 8:02CV553; Filing No. 361 in case 8:02CV561) to the plaintiffs' motion is denied as set forth herein.

4. Counsel for the defendants shall initiate a telephone conference with the undersigned magistrate judge and counsel for all parties within ten (10) working days of the ruling on the motion to dismiss Plaintiffs' Third Amended Consolidated Class Action Complaint for the purpose of further scheduling in this matter.

DATED this 19th day of June, 2006.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge